**Dy.General Manager,Zinc Smelter Debari & Ors. vs. Industrial Tribunal, Udaipur.**
**(S.B.C.Writ Pet.No.2649/2001)**

Date of Order:- 1st September,2006.

**HON'BLE MR.JUSTICE MOHAMMAD RAFIQ**

Mr.Rajesh Joshi, Advocate for the petitioner.
Mr.Mahesh Bora, Advocate for the respondent.

Challenge in this writ petition has been made to the award dated 22.5.2001 passed by the learned Industrial Tribunal-cum-Labour Court,Udaipur . The controversy involved in this case centers around interpretation of clause 16 of the settlement between management and the Union. The said clause is reproduced hereunder:-

"16.Protection of seniority

16.1All the existing workmen will be fitted in the revised pay scales as per para-4.1. After fitment if any worker belonging to the same line of promotion and category draw lower basic salary then his junior(s) the salary of the senior will be stepped up from the date he gets lower salary may be required to protect his seniority in respect of basic pay.

16.2 If any anomaly occurs after 1.7.1992 as a result of promotion(except due to regularisation of stagnation promotion cases in regular category) i.e. if a junior gets higher salary than his senior in the same L.O.P. and does not get rectified after fitment as on 1.7.95, the basic pay of the senior will be stepped up in a manner that may be required to maintain his seniority. However, it is agreed that all the cases of previous year will be settled together in January next year.

16.3 In case of juniors in lower same pay scales drawing higher salary than seniors of the same L.O.P., draw higher pay than senior after promotion, such cases will not come under the definition of `anomalies'."

The respondent-workman filed an application u/s 33-C(2) of

the Industrial Disputes Act, 1947 ( for short “the Act of 1947”) claiming that he having worked on the post of Assistant Foreman in the Electrical Department in the pay scale of 2750-5400 was getting basic pay of Rs.4995/- on 1.10.1995. As against this, one Khemraj Paliwal who was junior to him and was also working as Assistant Foreman was being paid a sum of Rs.5265/- as salary w.e.f. 1.7.1995. In his manner his junior was getting Rs.270/- more as salary than him.

The management contested the case of the workman on the ground that there are different lines of promotion with them in different departments. The petitioner who is working as Assistant Foreman in Electrical Department of the Management cannot compare himself with Khemraj Paliwal who is working as Assistant Foreman in the Mechanical Department. Both the lines are different and therefore, their lines of promotions are also different. The respondent stated that Khemraj was receiving only a sum of Rs.5,130/- as salary w.e.f. 1.7.1995 and not Rs.5265/- as alleged by the workman. According to clause 16 of the Settlement cited supra, the salary of the senior was required to be stepped up in the context of seniority of two persons in the same line of promotion. In the present case, as both the employees are working in different line of promotion, there was no question of any pay anomaly.

I have heard Mr.Rajesh Joshi, learned counsel for the petitioner and Mr.Mahesh Bora, learned counsel for the respondents and perused the record.

Mr.Rajesh Joshi, learned counsel for the petitioner has argued that whether or not two employees are working in the same line of promotion and whether the respondent-workman was senior to other workman Khemraj Paliwal were essentially disputed questions of fact and therefore, they could not be decided in the limited jurisdiction available to the Industrial Tribunal u/s 33-C(2) of the Act of 1947. He has placed reliance on the judgments of the Hon'ble Supreme Court in **State of U.P.& Anr. vs. Brijpal Singh**, reported in (2005) 8 S.C.C. 58, **State Bank of India vs. Ram Chandra Dubey & Ors.**, reported in (2001) 1 S.C.C. 73 and **Municipal Corporation of Delhi vs. Ganesh Razak & Anr**., reported in (1995) 1 S.C.C. 235.

On the other hand, Mr.Mahesh Bora, learned counsel for the respondents argued that the controversy involved in the present case can be decided only on the basis of interpretation of clause 16 of the Settlement. Other facts regarding the date of promotion and the post on which the promotion was given not being in dispute, the learned Industrial Tribunal did not commit any error of law in allowing the application filed by the workman.

I have given my thoughtful consideration to the arguments advanced by both the learned counsels and perused the record.

In the present case, clause 16 referred to above clearly provides that salary of the senior was liable to be stepped up at par with the pay of the junior if they belong to the same line or category. The

Industrial Tribunal has acknowledged the fact that both the workmen were coming from different categories . While the respondent-workman was from Electrical Department, other workman Khemraj Paliwal was from Mechanical Department. The Tribunal therefore erred in law by holding the case of the respondent-workman as one of pay anomaly under clause 16 of the Settlement. In doing so, the learned Tribunal further erred by holding that according to the spirit of the Settlement, the pay anomaly could be revoked if the employees belong to similar line of promotion. Obviously, the Industrial Tribunal erred in confusing the word “same” with “similar”, which is completely contrary to clause 16 because what has been mentioned in Clause 16 is “the same line of promotion and category”.

The award passed by the learned Industrial Tribunal is therefore liable to be set aside and is accordingly set aside. However, looking to the fact that pay anomaly persisted only for the period from 1.7.1995 to 30.6.1997 i.e. for two years and the difference of the pay of the respondent-workman with that of Khemraj Paliwal being only Rs.140/- per month, the total amount of difference would come to Rs.3360/- only and that the Management has already made payment of this amount of difference and in the peculiar facts, when the petitioner has already voluntarily retired from service and even filed the present writ petition after his retirement, it would not be just to now permit the Management to recover such a meager amount. In the circumstances, while setting aside the award, it is directed that the respondents will not make any recovery of the amount paid to the respondent-workman.

With the aforesaid observations, the writ petition is allowed . There shall be no order as to costs.

**(MOHAMMAD RAFIQ),J.**